SEP 14
CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 323

THE CRUMMER COMPANY, AND R. E. CRUMMER & COMPANY,

Petitioners,

vs.

THE HONORABLE WILLIAM J. BARKER, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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INDEX

Subject Index

	Page
Petition for Writ of Certiorari	1
Opinions below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	2
Statement	2
Specification of errors to be urged	7
Reasons for granting the writ	7
Conclusion	15
Appendices:	
A	16
B	17
C	19
D	20

Table of Cases Cited

Adler v. *McKee*, 92 Fed. Supp. 613, 614 (1950)	19
Aircraft Marine Products v. *Burndy Engineering Co.*, 96 Fed. Supp. 588, 591 (1951)	19
Ackerman v. *Hook*, 183 F. (2d) 11 (1950)	11
Auburn Capitol Theatre Corp. v. *Schine Chain Theatres, Inc.*, 83 Fed. Supp. 872 (1949)	11, 17
Amalgamated Ass'n., etc. v. *Southern Bus Lines*, 172 F. (2) 946 (1949)	14, 19
Atlantic Coast Line R. Co. v. *Davis*, 185 F. (2) 766 (1950)	14
Apex Electrical Mfg. Co. v. *Sears & Roebuck Co.*, 87 Fed. Supp. 533, 534 (1949)	18
Automatic Washer Co. v. *Easy Washing Machine Co.*, 91 Fed. Supp. 894, 895 (1950)	19
Brainard v. *Atchison, T. & S. F. Ry.*, 81 Fed. Supp. 211 (1948)	19
P. Beiersdorf Laboratories v. *Duke Laboratories, Inc.*, 91 Fed. Supp. 287 (1950)	19

Page

Bounds v. *Streckfus Steamers, Inc.*, 89 Fed. Supp. 242, 243 (1950) 18
Brown v. *Insurograph, Inc.*, 85 Fed. Supp. 328, 329 (1949) 17
Belair v. *New York, N. H. & H. Ry.*, 88 Fed. Supp. 572, 573 (1950) 18
Cinema Amusements v. *Loew's, Inc.*, 85 Fed. Supp. 319, 322 (1949) 17
Cullinan v. *New York Central Ry.*, 83 Fed. Supp. 870, 872 (1948) 17
Conley v. *Pa. Ry.*, 87 Fed. Supp. 980 (1950) 20
Dolly Toy Co. v. *Bancroft Rellim Corp.*, 97 Fed. Supp. 531, 534 (1951) 19, 20
Ex parte Collett, 337 U. S. 55 (1949) 8, 15
Ex parte Peru, 318 U. S. 578 15
Ex parte Fahey, 332 U. S. 258, 260 (1947) 15
Ford Motor Co. v. *Ryan*, 182 F. (2) 329 (1950) 14, 17
Ferguson v. *Ford Motor Co.*, 89 Fed. Supp. 45, 50, 51 (1950) 18, 20
Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501, 508, 511 (1947) 2, 7
General Electric Co. v. *Marvel Rare Metals Co.*, 287 U. S. 430 (1932) 13
Glasfloss Corp. v. *Owens-Corning Fiberglas Corp.*, 90 Fed. Supp. 967, 971 (1950) 18
Greve v. *Gibraltar Enterprises*, 85 Fed. Supp. 410, 413 (1949) 20
Headrick v. *Atchison, T. & S. F. Ry.*, 182 F. (2) 305, 310 (1950) 17
Hayes v. *Chicago, R. I. & P. Ry.*, 79 Fed. Supp. 821, 823 (1948) 17
Hansen v. *Nash-Finch Co.*, 89 Fed. Supp. 108 (1950) 18
Hampton Theatres v. *Paramount Film Distributing Corp.*, 90 Fed. Supp. 645, 647 (1950) 18
Henderson v. *American Airlines*, 91 Fed. Supp. 191, 192 (1950) 18
Hannett v. *Warner Bros. Pictures*, 176 F. (2) 145, 152 (1949) .....
Huff v. *Nashville & Chattanooga Ry.*, 88 Fed. Supp. 735, 736 (1949) 20
Johnson v. *Baker*, 81 Fed. Supp. 563, 565 (1948) 17

Page

Jiffy Lubricator v. *Stewart-Warner Corp.*, 177 F. (2) 360, 362 (1949) 19
Kasper v. *Union Pacific Ry.*, 97 Fed. Supp. 275, 276 (1951) 19
Levenson v. *Little*, 81 Fed. Supp. 513, 514 (1949) 17
Lucas v. *New York Central Ry.*, 88 Fed. Supp. 536, 538 (1950) 18
Latimer v. *S/A Industries Reunidas F. Matarazzo*, 91 Fed. Supp. 469, 470 (1950) 18
McCarley v. *Foster-Milburn Co.*, 89 Fed. Supp. 643, 647 (1950) 20
McClellan v. *Carland*, 217 U. S. 268 15
Magnetic Engineering & Mfg. Co. v. *Dings Separator Co.*, 86 Fed. Supp. 13, 15 (1949) 17
Maloney v. *N. Y. Central Ry.*, 88 Fed. Supp. 568, 570 (1949) 18
Masterpiece Productions v. *United Artists Corp.*, 94 Fed. Supp. 116, 117 (1950) 19
Mason v. *Chicago R. I. P. Ry.*, 96 Fed. Supp. 361, 363 (1951) 19
Nicol v. *Koscinski*, 188 F. (2) 537 (1951) 17
Nicol v. *J. C. Penney Co.*, 97 Fed. Supp. 83, 85 (1951) 19
Naughton v. *Pennsylvania Ry.*, 85 Fed. Supp. 671, 764 (1949) 17
Otto v. *Hirl*, 89 Fed. Supp. 72, 73 (1950) 18
Paramount Pictures v. *Rodney*, 186 F. (2) 111 (1950), Cert. Den. — U. S. —, 95 L. Ed. 453, (Adv. Sh.) (1951) 12
Pan American Airways & Consolidated Vultee Aircraft, 87 Fed. Supp. 926, 930, 1949) 18
Richer v. *Chicago, R. I. & P. Ry.*, 80 Fed. Supp. 971, 972 (1948) 17
Stonite Products Co. v. *Melvin Lloyd Co., et al.*, 315 U. S. 560 (1942) 10
Savoia Films v. *Vanguard Films*, 10 F.R.D. 64, 67 (1950) 18
Skultety v. *Pennsylvania Ry.*, 91 Fed. Supp. 118, 119 (1950) 18

Page

Spena v. *Norfolk & W. Ry.*, 89 Fed. Supp. 823, 824, (1950) 20
Tankel v. *Seiberling Rubber Co.*, 95 Fed. Supp. 987, 988 (1951) 19
U. S. v. *Scophony Corp. of America*, 333 U. S. 795 (1948) 11
U. S. v. *National City Lines*, 334 U. S. 573 (1948) 11
U. S. v. *National City Lines*, 337 U. S. 78 15
U. S. v. *Scott & Williams*, 88 Fed. Supp. 531, 533 (1950) 18, 20
U. S. v. *E. I. duPont de Nemours & Co.*, 83 Fed. Supp. (1949) 19
U. S. v. *Gerber*, 86 Fed. Supp. 175, 178 (1949) 20
U. S. v. *Briggs*, 86 Fed. Supp. 178 (1949) 20
U. S. v. *E. I. duPont de Nemours & Co.*, 87 Fed. Supp. 962, 965 (1950) 20
Walsh v. *Pullman*, 89 Fed. Supp. 762, 764 (1949) 18
Wookey v. *Waterman S. S. Corp.*, 89 Fed. Sup. 909, 910 (1950) 18
White v. *Employers' Lia. Assurance Corp.*, 86 Fed. Supp. 910, 912 (1949) 20

STATUTES CITED

28 U. S. C., Sec. 1404(a) 2, 10, 16
28 U. S. C., Sec. 1392 2
28 U. S. C., Sec. 1392(a) 5, 16
28 U. S. C. ,Sec. 1254(1) 2
New Title 28 U. S. C., Sec. 1948 7

MISCELLANEOUS

KAUFMAN, Irving—Observations on Transfers under Section 1404(a) of the New Judicial Code, 10 F.R.D. 598 20
Federal Rules of Civil Procedure, Rule 45 (e) 6

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on April 25, 1951.

Opinions Below

The findings of fact and order of the District Judge (R. 628-643) are unreported. The order of the Fifth Circuit denying relief, without opinion (R. K)[1] is unreported.

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[1] Lettered references (R.-A, etc.) are to the mandamus proceedings. Numbered references (R.-1, etc) are to the "appeal" record, the bulk of which was filed as exhibits to the petition for mandamus.

Jurisdiction

The decision of the Court of Appeals was entered on April 25, 1951 (R. K). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

Questions Presented

1. Is an erroneous transfer order under Section 1404(a) of Title 28, U. S. Code, reviewable by extraordinary writ?

2. Are the standards established by this court in *Gulf Oil Corp* v. *Gilbert,* 330 U. S. 501 (1947) applicable to a motion for transfer under Section 1404(a) of Title 28, U. S. Code?

3. When suit is brought in a proper venue and a counterclaim is filed there, may the court transfer the entire action, including the counterclaim, to another forum, under Section 1404(a), although for all that appears in the record venue in the transferee forum would be improper?

4. Is Section 1392 of Title 28, U. S. Code, applicable to antitrust suits?

Statutes Involved

The pertinent statutory provisions are printed in Appendix "A", *infra,* pp. 16.

Statement

1. *The Nature of the Case.*

This is an antitrust suit commenced in the Orlando Division of the United States District Court for the Southern District of Florida for $30,000,000 treble damages, of which the plaintiff, The Crummer Company, claims $22,500,000, and the plaintiff R. E. Crummer & Company claims $7,500,000 (R. 58). Defendants are the Florida duPont interests and their allies (R. 6, 8, 9) in a conspiracy to dominate

the State of Florida and the market in its municipal securities and to destroy the plaintiffs (R. 22-58). These defendants are the trustees of the duPont Trust (three individuals and one corporation), twelve individuals (including two individuals also sued as trustees), and four corporations, including two municipal bond houses (R. 6, 8, 9).

The plaintiffs were dealers in Florida municipal bonds in interstate commerce (R. 7, 9, 10). R. E. Crummer & Company from 1934 to 1942 was highly successful except for the damage done by the defendants (R. 14-22, 31-34, 57-58), and The Crummer Company, as successor, from 1943 to date would have been similarly successful were it not for defendants' activities (R. 14-58).

The duPont interests, as part of their program to dominate various aspects of commercial and industrial life in Florida (R. 22-57) decided about 1938 strongly to enter the municipal bond field (R. 25-27). Organizing themselves in a series of joint endeavors, beginning in 1938, (R. 25, 28) they and the two municipal bond houses competed in the field of public finance against the plaintiff, R. E. Crummer & Company (R. 25-29). Finding, however, this competition objectionable, they conspired, beginning in 1941, to destroy R. E. Crummer & Company, thus removing its competition (R. 30). After the conspiracy was afoot, R. E. Crummer & Company, for reasons of its own, ceased business, intending to dissolve, and the plaintiff The Crummer Company was organized and equipped to fulfill its business position in the field of municipal finance, the change to take place as of January 1, 1943 (R. 20-22). The conspiracy having been originated against R. E. Crummer & Company was enlarged in its purpose to suppress and destroy The Crummer Company in its inception (R. 41-58). The unlawful means included the instigation of federal criminal prosecutions against officers of the

plaintiffs (R. 36-38) resulting in indictments which were later dismissed (R. 38-40), interference with the procurement by The Crummer Company of a license to do business in Florida as a dealer in municipal securities (R. 41-44), the instigation of civil litigation (R. 40-49), slander and libel of business reputation (R. 49-52), and other acts of a predatory nature (R. 30).

The defendants have denied the existence of any such conspiracy (R. 65-224), have denied various specific acts as alleged (R. 65-224), or in the case of admitted acts have asserted the legality thereof (R. 65-224). The defendants Clyde C. Pierce Corporation and Clyde C. Pierce individually have filed a counterclaim against R. E. Crummer & Company alleging that this plaintiff during its business life was itself a monopoly in its Florida operations and dominated or controlled the various local taxing units of the State, especially in their fiscal affairs (R. 362, 540). The duPonts and other defendants have made similar allegations as a defense and have asserted that plaintiffs committed other improper acts in connection with their business (R. 65-224).

2. *Location of the Parties.*

Eleven individual and four corporate defendants are residents of, and are found in, the Southern District of Florida (R. 631-632). One individual and one corporate defendant (Edward Ball and the St. Joe Paper Company) are residents of the Northern District of Florida (R. 631), although both have places of business in the Southern District (R. 363). Service of process upon every defendant except Elbert Dent was made in the Southern District (R. 63). Both plaintiffs have their only Florida office and facilities in the Southern District (R. 363, 629-630).

3. *Proceedings in the District Court.*

The Attorney General of Florida, although his two attempts to appear in this case have not been successful (R. 225, 317), filed a motion on behalf of defendants, Fuller, Clement and Shafer, in the United States District Court for the Southern District of Florida, Orlando Division, to transfer the cause to the United States District Court for the Northern District of Florida, Tallahassee Division, under Section 1404 (a) of the new Judicial Code (R. 318-320). Since all but two of the defendants joined in the motion (R. 629), the Attorney General was given the Court's oral permission to proceed (R. 465-467). Argument was had before the Honorable William J. Barker on November 13, 1950 (R. 464), and over five months later Judge Barker filed "findings" and an order transferring the case to Tallahassee (R. 628-643). The Court found that the parties are located as indicated above (R. 629-632); that the suit "could have been originally brought" in the Tallahassee Division "within the meaning of Section 1404 (a) and Section 1392 of 28 U. S. Code" (R. 632); that 45 percent of the overt acts alleged in the complaint took place in the Tallahassee Division of the Northern District of Florida (R. 633, 634); that records of an undisclosed exact nature and significance may be found at Tallahassee (R. 635-639); that although neither side had identified by name witnesses to be called, probably many if not most of plaintiff's witnesses would come from the Northern District (R. 640-641)—this although plaintiffs had in fact identified willing witnesses in the Orlando Division (R. 358-359), and defendants and their affiliates and employees, presumably unwilling witnesses, in the Southern District (R. 367, 587)—; and that the condition of the respective dockets made a speedier trial likely in Tallahassee (R. 641-642). The Court concluded that "when all factors are examined

in terms of 'convenience of parties and witnesses, in the interest of justice', the record shows that a sufficient weight of factors favoring the transfer has been established to impel the granting of the motion to transfer", and the order of transfer followed (R. 642-643). The Court made no finding regarding the convenience of the plaintiff, The Crummer Company, the active successor corporation with 20 years' accumulation of records (R. 358), or regarding the convenience of plaintiffs' willing witnesses (R. 358-359). No square finding was made that plaintiffs' compulsory process would be unimpaired (and in fact no such finding could be conceivably made) although plaintiffs earnestly urged that by removal of the cause to the Northern District compulsory process for attendance at the trial would be virtually eliminated (R. 361-362, 364-368, 552, 556, 561, 568, 569, 571, 577, 585, 586-588).[2] The Court also failed to find or to observe that although certain overt acts were brought to fruition at Tallahassee, the allegations of the complaint (R. 32-52) make it clear that the defendants, the great bulk of whom reside in the Southern District, were responsible for these acts.

4. *Proceedings in Court of Appeals.*

The plaintiffs sought a review by the Court of Appeals for the Fifth Circuit by way of a motion for leave to file a petition for mandamus, or other relief (R. A), but, after argument, this motion was denied without opinion on April 25, 1951. Thereafter, desiring to avail themselves of or to exhaust all possible remedies in the Court of Ap-

[2] It is significant that the defendants moving for or joining in the motion for transfer had theretofore demanded a jury trial; thus the transfer has utterly deprived plaintiffs of compulsory process to require attendance before the jury of any unwilling witnesses (or willing witnesses who might demand a subpoena) who reside in the Southern District at any point beyond the 100 mile limit prescribed by Rule 45 (e), Federal Rules of Civil Procedure.

peals, the plaintiffs perfected an appeal in that court under Docket No. 13,702 and petitioned this Honorable Court for an extension of time in which to seek certiorari. An extension was granted to and including September 20, 1951 by order of the Honorable Hugo L. Black dated July 16, 1951. The certified record was filed in this Court on September 14, 1951, and petitioners will move to defer consideration of the instant petition until it can be considered together with a petition for certiorari which will be forthcoming if the Fifth Circuit denies relief on the appeal.

Specification of Errors To Be Urged

The Court of Appeals erred:

1. In sanctioning the transfer order of the District Judge, although it was based upon wholly inadequate grounds and constituted an abuse of discretion amounting to a usurpation of power.

2. In denying plaintiffs' leave to file their petition for mandamus and failing to consider same on the merits.

3. In denying plaintiffs any relief whatever.

Reasons For Granting the Writ and Brief in Support of Petition

1. The decision of the Court of Appeals below, in denying relief and thus sanctioning the findings and order of the District Judge, is believed to be in conflict with the decision of this Court in *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501 (1947). The *Gilbert* case, although decided before the new Judicial Code was promulgated, concerned the doctrine of forum non conveniens. The Revisers' Notes to the Code state that Section 1404(a) "was drafted in accordance with" this doctrine. U. S. Code Congressional Service, *New Title 28—United States Code,* 1948, p. 1853. The force of these notes has recently been emphasized by this Court in

Ex parte Collett, 337 U. S. 55 (1949). The standards established in the *Gilbert* case should therefore still apply under Section 1404(a), even though transfer has been substituted for dismissal, the potentialities of transfer being not necessarily less harsh than dismissal.

In the *Gilbert* case, Mr. Justice Jackson, for the Court, stated certain factors to be considered in connection with the doctrine of forum non conveniens. (330 U. S. 501, 508). These included the "private interest of the litigant." Judge Barker did not accord any real consideration to the interest of plaintiff, The Crummer Company (R. 629-630), although a glance at the *ad damnum* of the complaint (R. 58) clearly indicates that the Crummer Company is the principal plaintiff in this suit. "Important considerations" pointed out in the *Gilbert* case were "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive" (330 U. S. 501, 508). The first of these factors was considered by Judge Barker (R. 633-641) but petitioners contend that the end result was error. Judge Barker made no square finding on compulsory process, but the finding which was made, citing rules pertaining to discovery (R. 639) appears to mean that plaintiffs will be forced to try their case on deposition, a condition which the *Gilbert* case characterized as "not satisfactory to court, jury or most litigants" (330 U. S. 501, 511). A jury trial will be had in this cause because of demand therefor made by the same parties moving to transfer and plaintiffs have been wholly deprived of all rights to compulsory process for the attendance of witnesses before the jury, the bulk of whom live beyond 100 miles from

the place of trial, if it is held in Tallahassee; this includes the natural defendants and officers, agents and employees of the corporate defendants, all unwilling or neutral witnesses who will not come unless served, as well as officers, agents or employees of affiliates of named defendants whose testimony before the jury may be required. It is no answer to say that a costly deposition procedure is a substitute for the personal appearance on the stand of a living witness before a jury. The expense of transporting willing witnesses to Tallahassee, and the enormous expenses to the plaintiffs, and, indeed, to most defendants, in transferring the case away from their residence, were not considered by Judge Barker.

Most significant of all are the words of Mr. Justice Jackson concluding the section of the opinion in the *Gilbert* case with which we are immediately concerned:

> "It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex', 'harass', or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. *But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed*" (330 U. S. 501, 511. Footnote omitted and emphasis added).

It has never been contended in this case that the plaintiffs chose a vexatious forum or made their choice otherwise than in accordance with the antitrust venue statutes and at a place where they could afford to litigate and hope to prevail, *i. e.*, their home forum and the home forum of the great bulk of defendants. On the whole record here, it cannot be found on any ground or pretext that the "balance is strongly in favor of the defendants." The action of the Court of Appeals in placing its imprimatur on the order of Judge Barker sanctioned the bringing of the mountain to

Mahomet, and was contrary to both the letter and spirit of the *Gilbert* case.

Petitioners interpret the *Gilbert* case as requiring two forums wherein the action might have been brought as a necessary prerequisite to the application of the forum non conveniens doctrine. There is nothing in the record here to suggest, and the movants have therefore failed to sustain the burden of establishing, that the suit might have been brought in the Tallahassee Division of the Northern District within the meaning of Title 15, U. S. Code, Sections 15 and 22, the antitrust special venue and service of process statutes. Judge Barker found, however, that this suit "could have been originally brought" in the Tallahassee Division "within the meaning of Section 1404(a) and Section 1392 of 28 U. S. Code" (R. 632). Under Section 1392(a):

> "Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts."

Petitioners contend that this section has no applicability to antitrust suits which are governed by special venue statutes.

In *Stonite Products Company* v. *Melvin Lloyd Company, et al.*, 315 U. S. 560 (1942), this Honorable Court unanimously held that Section 113 of former Title 28, U. S. Code (predecessor of present Section 1392) does not supplement and is not applicable to the special venue provisions governing patent infringement litigation. Reversing the Court of Appeals for the Third Circuit, this Court held that the Stonite Products Company, an inhabitant of the Eastern District of Pennsylvania, without a regular and established place of business in the Western District of Pennsylvania, could not be sued jointly with the Lowe Supply Company, an inhabitant of the Western District. Review-

ing the legislative history of the venue sections of the patent laws, the Court concluded that the special and individualized treatment given them by Congress led to the conclusion that Congress intended such patent venue provisions to be exclusive and sufficient unto themselves, and represented definite Congressional notions of fairness, venuewise, in this type of litigation.

Since the 1948 revision of Title 28 went into effect it has been held that the *Stonite* case is just as much in point now as before and that venue of patent litigation is unaffected by Section 1392. *Ackerman* v. *Hook,* 183 F. (2) 11, (C. A. 3, 1950).

Every consideration applicable to the *Stonite* decision seems applicable to the present case, and the venue sections of the antitrust laws are believed to be exclusive and sufficient unto themselves. There can be no doubt from the legislative history of the antitrust venue provisions that Congress carefully worked out the venue of these cases based upon the special considerations applicable to this type of legislation. *U. S.* v. *Scophony Corporation of America,* 333 U. S. 795 (1948); *U. S.* v. *National City Lines,* 334 U. S. 573 (1948). Indeed, in the first *National City Lines* case, *supra,* the opinion records the fact that several proposed amendments making venue broader were opposed and defeated because they went too far (334 U. S. 573, 587-588). This legislative history is strongly indicative of the validity of the principles of the *Stonite* case as applied to antitrust cases. We therefore submit that the Court of Appeals, in failing to reverse Judge Barker's order, based in part upon Section 1392(a) of the new Judicial Code, was in error. In making this contention, we do not overlook *Auburn Capitol Theatre Corp.* v. *Schine Chain Theatres, Inc.,* 83 Fed. Supp. 872 (S. D. N. Y. 1949), which finds Section 1392 applicable to an antitrust suit, without analysis,

and which we consider inconsistent with the *Stonite* case, *supra*. Nor do we overlook *Paramount Pictures* v. *Rodney*, 186 F. (2) 111 (3 Cir. 1950); Cert. Den. — U. S. —, 95 L. Ed. 453 (1951), which we consider inconsistent with the meaning of the *Gilbert* case, *supra*, and which would appear to eliminate venue as a consideration, at least as to corporate antitrust defendants. But if the *Rodney* case is applicable in this situation, petitioners believe that antitrust defendants will be given so great an advantage that it will virtually place a period upon the era of private antitrust litigation.

The question of the applicability or non-applicability of the *Gilbert* standards to 1404(a) transfer motions, discussed above, is one of great importance in the administration of the antitrust laws of the United States. In the first place, Section 1404(a) is new to federal procedure. If the statute imposes the principles of the common law doctrine, the standards are reasonably well known and have been disregarded or violated in the present case. On the other hand, if transfer be regarded as so much less drastic than dismissal as of old that completely new standards are indicated, then these new standards ought in the interest of judicial administration to be defined for the guidance of the trial courts.

The situation is aggravated by the wording of the statute itself, since the broad sweep of its language "in the interest of justice" is the ultimate generalization known to the law and leaves room for all types of contradictory and unpredictable results. There is nothing in the legislative history to indicate that Congress or any of its advisers at any time considered the standards of convenience and justice which were to govern transfers, or the review and correction of errors under the transfer section, or the im-

pact of this unpredictability upon litigants in the federal courts.

Antitrust cases have now come to be recognized as litigation of such complexity and size as to tax severely both courts and litigants. Numerous articles have analyzed and proposed new techniques for the organization of the great masses of oral and written evidence common in such actions.

No lawyer can conscientiously advise his client to institute an antitrust suit without acute concern for the expense and delay of the usual procedural impediments present in this type of litigation. If, on top of this uncertainty, there is superimposed an unknowable and unpredictable tampering with the place of trial, and thus with the compulsory processes of the court, the pitfalls of antitrust litigation become so treacherous that the bringing of an action may be prohibited by common prudence, even though the substantive rights are clear.

Under modern counterclaim theory, any person who institutes a lawsuit in a given district waives his right to object to venue in the selected forum as to any type of adverse claim within the substantive jurisdiction of the court which defendants may assert against him. *General Electric Co.* v. *Marvel Rare Metals Co.*, 287 U. S. 430 (1932). Even if we assume that such venue waiver by a plaintiff ought to be allowed in the interest of avoiding multiple suits, plaintiff should be able to predict to some extent the forum where a counterclaim may be asserted against him. If Section 1404(a) leaves transfer wholly within the discretion of the district judge, without standards and without supervision, a plaintiff's unpredictable problems will also include an unknown counterclaim to be tried in an unknown district.

2. The decision of the Court of Appeals below is believed to be in conflict with the decision of the Second Circuit

Court of Appeals in *Ford Motor Co.* v. *Ryan,* 182 F. (2) 329 (1950), and particularly with the concurring opinion of Judge Learned Hand in that case (182 F. (2) at p. 332), when he stated, in line with the rule of *Gulf Oil* v. *Gilbert, supra,* that the plaintiff's venue privileges still counts in the scale, and that "a defendant must do more than show that a transfer will on the whole make the trial more convenient; it must make the trial markedly more convenient." Other cases holding that a heavy balance of convenience is necessary before a transfer may be made, or citing the *Gilbert* case as determining the criteria to consider on a motion for transfer under Section 1404(a) are collected in Appendix "B", *infra.* In denying relief from the order of Judge Barker, made by non-*Gilbert* standards, the Fifth Circuit apparently followed its own previous opinion in *Amalgamated Assn., etc.* v. *Southern Bus Lines,* 172 F. (2) 946 (1949) holding that a broader discretion may be exercised under 1404(a) than under forum non conveniens, but this discretion is not further defined. Other cases holding that 1404(a) is far looser than forum non conveniens are collected in Appendix "C", *infra.* Cases referring to a conflict in the decisions on the issue of whether 1404(a) is a codification of forum non conveniens, or whether it introduces a new discretionary principle in the law, are collected in Appendix "D", *infra.*

Petitioners contend that the rule of the Second Circuit, as announced by Judge Hand in *Ford Motor Co.* v. *Ryan, supra,* is correct, and that the rule of the Fifth Circuit as evidenced by the instant case is wrong for reasons of policy given in the preceding section of this argument (p. 7, *supra*).

3. The decision of the Court of Appeals below is inconsistent with its own previous decision in *Atlantic Coast Line R. Co.* v. *Davis,* 185 F. (2) 766 (1950). There the Court was faced with a retransfer upon wholly inadequate grounds.

Here the Court was faced with a transfer upon grounds equally inadequate. A distinction of this case on the basis that it is a mere initial transfer would be unrealistic, the true test being the great prejudice to the plaintiffs' case. In the *Davis* case, the Court of Appeals determined that it had jurisdiction to consider the merits on petition for mandamus under Title 28, U.S.C., Section 1651(a), and within the rulings of, *inter alia, McClellan* v. *Carland,* 217 U. S. 268, *Ex parte Peru,* 318 U. S. 578, *Ex parte Collett,* 337 U. S. 55, and *U. S.* v. *National City Lines,* 337 U. S. 78. Yet the same court denied petitioners' motion for leave to file a petition for mandamus and other relief, without any consideration of the merits whatever, even though the same authority to consider the merits existed for this case as for the *Davis* case, *supra.* Petitioners concede that extraordinary writs are reserved for extraordinary cases, *Ex parte Fahey,* 332 U. S. 258, 260 (1947). But they earnestly contend that the arbitrary transfer of a $30,000,000 lawsuit away from a forum having many points of contact with the case to one having virtually no connection with it at all, on the present state of the law, represents a truly extraordinary cause requiring the prompt and thorough consideration of the Court of Appeals.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners.

APPENDIX "A"

1. Title 28 U. S. C., Sec. 1404 (a):

Change of Venue

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

2. Title 28 U. S. C., Sec. 1392 (a):

Defendants or property in different district in same State

"Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts."

3. Title 15 U. S. C., Sec. 15:

Suits by persons injured; amount of recovery.

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Oct. 15, 1914, ch. 323, Sec. 4, 38 Stat. 731)."

4. Title 15 U. S. C., Sec. 22:

District in which to sue corporation.

"Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever

it may be found. (Oct. 15, 1914, ch. 323, Sec. 12, 38 Stat. 736.)"

APPENDIX "B"

The following cases cite *Gulf Oil* v. *Gilbert* as determining the criteria to consider on a motion to transfer under 28 U.S.C. 1404(a), or otherwise hold that a heavy balance of convenience is necessary before a transfer will be made:

Court of Appeals

Headrick v. *Atchison, T. & S. F. Ry.*, 182 F. (2) 305, 310, (10th Cir. 1950), Pickett, C. J.

Ford Motor Co. v. *Ryan*, 182 F. (2) 329, 330 (2d Cir. 1950), Frank, C. J.

Nicol v. *Koscinski*, 188 F. (2) 537, (6th Cir. 1951), Simons, J.

District Courts

Hayes v. *Chicago, R. I. & P. Ry.*, 79 Fed. Supp. 821, 823, (D. Minn. 1948), Nordbye, J.

Richer v. *Chicago, R. I. & P. Ry.*, 80 Fed. Supp. 971, 972, (E. D. Mo. 1948), Hulen, J.

Levenson v. *Little*, 81 Fed. Supp. 513, 514, (S. D. N. Y. 1949), Ryan, J.

Johnson v. *Baker*, 81 Fed. Supp. 563, 565, (S. D. N. Y. 1948), Kaufman, J.

Cullinan v. *New York Central Ry.*, 83 Fed. Supp. 870, 872, (S. D. N. Y. 1948), Hulbert, J.

Auburn Capital Theatre Corp v. *Schine Chain Theatres*, 83 Fed. Supp. 872, 874, (S. D. N. Y. 1949), Ryan, J.

Naughton v. *Pennsylvania Ry.*, 85 Fed. Supp. 671, 764, (E. D. Pa. 1949), Kirkpatrick, J.

Cinema Amusements v. *Loew's, Inc.*, 85 Fed. Supp. 319, 322, (D. Del. 1949), Rodney, J.

Brown v. *Insurograph, Inc.*, 85 Fed. Supp. 328, 329, (D. Del. 1949), Rodney, J.

Magnetic Engineering & Mfg. Co. v. *Dings Separator Co.*, 86 Fed. Supp. 13, 15, (S. D. N. Y. 1949), Hulbert, J.

Apex Electrical Mfg. Co. v. *Sears & Roebuck Co.,* 87 Fed. Supp. 533, 534, (S. D. Ohio 1949), Nevin, J.

Pan American Airways v. *Consolidated Vultee Aircraft,* 87 Fed. Supp. 926, 930 (S. D. N. Y. 1949), Noonan, J.

United States v. *Scott & Williams,* 88 Fed. Supp. 531, 533, (S. D. N. Y. 1950), Irving Kaufman, J.

Lucas v. *New York Central Ry.,* 88 Fed. Supp. 536, 538, (S. D. N. Y. 1950), Irving Kaufman, J.

Savoia Films v. *Vanguard Films,* 10 F. R. D. 64, 67, (S. D. N. Y. 1950), Irving Kaufman, J.

Maloney v. *New York Central Ry.,* 88 Fed. Supp. 568, 570, (S. D. N. Y. 1949), Noonan, J.

Belair v. *New York N. H. & H. Ry.,* 88 Fed. Supp. 572, 573, (S. D. N. Y. 1950), Irving Kaufman, J.

Ferguson v. *Ford Motor Co.,* 89 Fed. Supp. 45, 50, 51, (S. D. N. Y. 1950), Ryan, J.

Otto v. *Hirl,* 89 Fed. Supp. 72, 73, (S. D. Ia. 1950), Switzer, J.

Hansen v. *Nash-Finch Co.,* 89 Fed. Supp. 108, (D. Minn. 1950), Nordbye, J.

Bounds v. *Streckfus Steamers, Inc.,* 89 Fed. Supp. 242, 243, (D. Del. 1950), Rodney, J.

Walsh v. *Pullman,* 89 Fed. Supp. 762, 764, (S. D. N. Y. 1949), Leibell, J.

Wookey v. *Waterman S. S. Corp.,* 89 Fed. Supp. 909, 910, (S. D. N. Y. 1950), McGohey, J.

Hampton Theatres v. *Paramount Film Distributing Corp.,* 90 Fed. Supp. 645, 647, (D. D. C. 1950), Tamm, J.

Glasfloss Corp. v. *Owens-Corning Fiberglas Corp.,* 90 Fed. Supp. 967, 971, (S. D. N. Y. 1950), Conger, J.

Skultety v. *Pennsylvania Ry.,* 91 Fed. Supp. 118, 119, (S. D. N. Y. 1950), Irving Kaufman, J.

Henderson v. *American Airlines,* 91 Fed. Supp. 191, 192, (S. D. N. Y. 1950), Irving Kaufman, J.

Latimer v. *S/A Industrias Reunidas F. Matarazzo,* 91 Fed. Supp. 469, 470, (S. D. N. Y. 1950), Noonan, J.

Automatic Washer Co. v. *Easy Washing Machine Corp.*, 91 Fed. Supp. 894, 895, (N. D. N. Y. 1950), Brennan, J.

P. Beiersdorf Laboratories v. *Duke Laboratories, Inc.*, 92 Fed. Supp. 287, 288, (S. D. N. Y. 1950), McGohey, J.

Adler v. *McKee*, 92 Fed. Supp. 613, 614, (S. D. N. Y. 1950), Noonan, J.

Masterpiece Productions v. *United Artists Corp.*, 94 Fed. Supp. 116, 117, (E. D. Pa. 1950), McGranery, J.

Tankel v. *Seiberling Rubber Co.*, 95 Fed. Supp. 987, 988, (N. D. Cal. 1951), Harris, J.

Nicol v. *J. C. Penney Co.*, 97 Fed. Supp. 83, 85, (E. D. Mich. 1951), Koscinski, J.

Dolly Toy Co. v. *Bancroft Rellim Corp.*, 97 Fed. Supp. 531, 534, (S. D. N. Y. 1951), Irving Kaufman, J.

Kasper v. *Union Pacific Ry.*, 97 Fed. Supp. 275, 276, (E. D. Pa. 1951), McGranery, J.

Mason v. *Chicago, R. I. P. Ry.*, 96 Fed. Supp. 361, 363, (W. D. Mo. 1951), Reeves, J.

Aircraft Marine Products v. *Burndy Engineering Co.*, 96 Fed. Supp. 588, 591, (S. D. Cal. 1951), Byrne, J.

APPENDIX "C"

The following cases hold that 28 U.S.C. 1404(a) is far looser than forum non conveniens:

Court of Appeals

Amalgamated Ass'n. of Street, Electric Railway and Motor Coach Employees of America v. *Southern Bus Lines*, 172 F. (2) 946, 948, (5th Cir. 1949), Sibley, C. J.

Jiffy Lubricator v. *Stewart-Warner Corp.*, 177 F. (2) 360, 362, (4th Cir. 1949), Parker, C. J.

District Courts

Brainard v. *Atchison, T. & S. F. Ry.*, 81 Fed. Supp. 211, (N. D. Ill. 1948), Campbell, J.

United States v. *E. I. duPont de Nemours & Co.*, 83 Fed. Supp. 233, (D. D. C. 1949), Holtzoff, J.

Greve v. *Gibraltar Enterprises,* 85 Fed. Supp. 410, 413, (D. N. M. 1949), Hatch, J.

United States v. *Gerber,* 86 Fed. Supp. 175, 178, (E. D. Pa. 1949), Bard, J.

United States v. *Briggs,* 86 Fed. Supp. 178, (E. D. Pa. 1949), Bard, J.

White v. *Employers' Liability Assurance Corp.,* 86 Fed. Supp. 910, 912, (E. D. S. C. 1949), Wyche, J.

United States v. *E. I. duPont de Nemours & Co.,* 87 Fed. Supp. 962, 965, (N. D. Ill. 1950), LaBuy, J.

Conley v. *Pennsylvania Ry.,* 87 Fed. Supp. 980, (S. D. N. Y. 1950), Irving Kaufman, J.

Huff v. *Nashville & Chattanooga Ry.,* 88 Fed. Supp. 735, 736, (S. D. N. Y. 1949), Rifkind, J.

McCarley v. *Foster-Milburn Co.,* 89 Fed. Supp. 643, 647, (W. D. N. Y. 1950), Knight, J. (order set aside by CA 2).

Spena v. *Norfolk & W. Ry.,* 89 Fed. Supp. 823, 824, (N. D. Ohio 1950), Freed, J.

"APPENDIX "D"

The following cases refer to a conflict in the decisions under 28 U. S. C. 1404(a) on the issue of whether 1404(a) is a codification of the doctrine of forum non conveniens or whether it introduces a new principle in the law:

United States v. *Scott & Williams,* 88 Fed. Supp. 531, 533, (S. D. N. Y. 1950), Irving Kaufman, J.

Ferguson v. *Ford Motor Co.,* 89 Fed. Supp. 45, 50, (S. D. N. Y. 1950), Ryan, J.

Aircraft Marine Products v. *Burndy Engineering Co.,* 96 Fed. Supp. 588, 593, (S. D. Cal. 1951), Byrne, J.

See also:

Dolly Toy Co. v. *Bancroft-Rellim Corp.,* 97 Fed. Supp. 531, 534, (S. D. N. Y. 1951), Irving Kaufman, J.

Observations on Transfers under Section 1404(a) of the New Judicial Code, Irving Kaufman, USDJ, 10 F.R.D. 595, 598.

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Supreme Court of the United States

OCTOBER TERM, 1951

No. 323

THE CRUMMER COMPANY, and R. E. CRUMMER & COMPANY,

Petitioners,

vs.

The Honorable WILLIAM J. BARKER, Judge of The United States District Court For The Southern District of Florida,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX (Continued)

PAGE

(1) Section 1392 of Title 28, U. S. Code would enable this Action to have been Brought in the Tallahassee Division 16

(2) Decisions upon Patent Case Venue are not Applicable to Anti-Trust Cases 18

(3) All Defendants have Waived any Venue Objection to Suit in the Tallahassee Division 19

Point II. The Decision of the Court of Appeals Below is not in Conflict with Decisions of Other Courts of Appeal 20

Point III. There is no Conflict with any Decisions of the Fifth Circuit and the Court of Appeals did not Abuse its Discretion in refusing to Grant a Writ of Mandamus 22

Conclusion 25

TABLE OF AUTHORITIES

PAGE

Abrams v. Bendix Home Appliances (S.D.N.Y., 1951) 96 Fed. Supp. 3 17

Ackerman v. Hook (C.A. 2, 1950) 185 F. (2d) 11 18

Amalgamated Assoc. etc. v. Southern Bus Line (C.C.A. 5, 1949) 172 F. (2d) 946 .....13, 21, 22

Anderson-Friburg, Inc. v. Clary & Sons, Inc. et al (S.D.N.Y., 1951) 98 Fed. Supp. 75 17

Apex Electrical Mfg. Co. v. Sears Roebuck & Co. (1949) 87 Fed. Supp. 533 18

Atlantic Coast Line v. Davis (C.A. 5, 1949) 185 F. (2d) 766 .....10, 23

Auburn Capitol Theatre Corp. v. Schine Chain Theatres (S.D.N.Y., 1949) 83 Fed. Supp. 872 17

Baltimore and Ohio R. Co. v. Kepner 314 U.S. 44, 86 L. Ed. 28 (1941) 14

Ex Parte Collett 337 U.S. 55, 93 L. Ed. 1207 (1949) 19

Ex Parte Fahey 332 U.S. 258, 91 L. Ed. 2041 (1947) 22

Ex Parte Kuwato 317 U.S. 69, 87 L. Ed. 58 (1942) 23

Ex Parte Peru 318 U.S. 578, 87 L. Ed. 1014 (1943) 23

Ferguson v. Ford Motor Co. (S.D.N.Y., 1950) 89 Fed. Supp. 45 20

Foster & Kleiser Co. v. Special Site Sign Co. (C.C.A. 9, 1936) 85 F. (2d) 742, cert. denied, 299 U. S. 613, 81 L. Ed. 452 11

Ford Motor Co. v. Ryan (C.A. 2, 1950) 182 F. (2d) 329 cert. denied 340 U.S. 851 (1950) 21

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 91 L. Ed. 1055 (1947) 9, 10, 13, 14, 15, 21

Headrick v. Atchison T. & S. Ry. Co. (C.A. 10, 1950) 182 F. (2d) 305 27

Jiffy Lubricator Co. Inc. v. Stewart-Warner Corp. (C.A. 4, 1949) 177 F. (2d) 360 .....14, 27

TABLE OF AUTHORITIES (Continued)

PAGE

Keller-Dorian Colorfilm Corp. v. Eastman Kodak Co. et al. (S.D.N.Y., 1949) 88 Fed. Supp. 863 17

Kilpatrick v. Texas and Pacific Ry. Co. 337 U.S. 75, 93 L. Ed. 1223 (1948) 23

Moffett v. Arabian American Oil Co., Inc. (S.D.N.Y., 1948) 8 F.R.D. 566 12

Paramount Pictures v. Rodney (C.A. 3, 1950) 186 F. (2d) 111 .....16, 20

Roche v. Evaporated Milk Assoc. 319 U.S. 21, 63 S. Ct. 938, 87 L. Ed. 1185 (1943) 23

State v. Gleason 12 Fla. 190 6

Stonite Products Co. v. Melvin-Lloyd Co. et al. 315 U.S. 560, 86 L. Ed. 1026 (1942) 18

Sucklow Borax Mines Consol. v. Borax Consol. Ltd. 81 F. Supp. 301, aff. 185 F. (2d) 196, cert. denied 340 U. S. 943 11

Tilden v. Quaker Oats Co. (C.C.A. 7, 1924) 1 F. (2d) 160 11

United Mutual Life Ins. Co. v. Avon Park 311 U.S. 138, 85 L. Ed. 91, rehearing denied 311 U.S. 730 (1940) 4

U. S. v. National City Lines, Inc. 337 U.S. 78, 68 S. Ct. 1169, 93 L. Ed. 1220 (1949) 14, 17, 18, 19

U. S. v. Scophony Corp. of America 333 U.S. 795, 92 L. Ed. 1091 (1948) 17, 18, 19

STATUTES

United States Code—

Title 15, Section 15 16

Title 15, Section 22 16

Title 15, Section 109 (old—now 28 U.S.C. 1400(b)) 18

TABLE OF AUTHORITIES (Continued)

PAGE

Title 28, Section 1392 ..... 8, 16, 17

Title 28, Section 1404(a) 6, 7, 8, 11, 13, 14, 16, 20, 21, 22, 23

Title 28, Section 1406(b) 20

Title 28, Section 1651(a) 22, 23

Other Statutes—

Constitution of State of Florida, Article IV, Section 22 6

Florida Statutes Annotated

Section 16.01 6

Chapter 517 3

Federal Rules of Civil Procedure

Rule 4(f) 16

Rule 5 12

Rule 26 12

Rule 30 12

Rule 37 12

MISCELLANEOUS

Moore, Commentary on the U. S. Judicial Code 14

Kaufman, "Transfer Under New Judicial Code", 10 F.R.D. 595 27